

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GENERAL ELECTRIC COMPANY,

Plaintiff,

v.

SIEMENS ENERGY, INC.,

Defendant.

Case No. 3:21-cv-00025 (JAG)

**DECLARATION OF KATY WILNER IN SUPPORT OF
PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION**

I, Katy Wilner, declare pursuant to 28 U.S.C. § 1746:

1. My name is Katy Wilner. I am employed by General Electric (“GE”) as a Global Commercial Leader in GE’s Power division. I am based in Pittsburgh, Pennsylvania. As a Global Commercial Leader for GE’s Power division, I oversee commercial operations for the heavy-duty gas products manufactured by the Power division, which include GE’s gas turbine engines. I have been in that role since February 2019, and have worked for GE Power since January 2000.

2. I submit this declaration in support of GE’s motion for a preliminary injunction in the above-captioned action. If called as a witness at a hearing, I would testify to the facts set forth in this declaration, all of which reflect my personal knowledge.

GE and the Gas Turbine Market

3. GE is a high-tech industrial company that operates worldwide through four industrial segments, including its Power segment. GE Power manufactures and sells

gas turbines, which are large, complex industrial machines that convert natural gas into electricity. GE manufactures several kinds of gas turbines, including “F-class” turbines, “H-class” turbines, and “aeroderivative” turbines. GE sells its gas turbines to public utilities and other power providers. It also provides maintenance and other services related to gas turbines.

4. GE competes against other manufacturers in the gas turbine market—*i.e.*, the market for the sale of gas turbines and long-term maintenance services for those turbines—to win both the product and service gas turbine contracts awarded by power providers in gas turbine requests for proposals (“RFPs”). Siemens Energy, Inc. (“Siemens”) is one of GE’s principal competitors in the gas turbine market. In addition to GE and Siemens, there are a small number of other gas turbine manufacturers that compete in the gas turbine market, including Mitsubishi Hitachi Power Systems Americas, Inc. and Ansaldo Energia.

5. Each year, GE and competing manufacturers compete for the product and service contracts for several dozen gas turbine projects. For most of these gas turbine projects, power providers select a single manufacturer to supply multiple new gas turbines—as many as a dozen or more, for large projects. In total, several hundred new gas turbines are ordered by power providers across the world every year.

6. Each set of product and service contracts for each new project in the gas turbine market is worth tens or hundreds of millions of dollars in revenue to the winning manufacturer. This includes the price of the gas turbines—very expensive machines that cost tens or hundreds of millions of dollars each—as well as generators, heat recovery steam generators, steam turbines, balance of the plant (which includes interconnecting

pipings and cabling), and the long-term maintenance service contracts, which are themselves very lucrative: each service contract provides the winning manufacturer with a revenue stream of tens or hundreds of millions of dollars in servicing costs over a multi-year period.

7. The current gas turbine market is highly competitive. Gas turbine manufacturers compete vigorously on technology and price. They spend many millions of dollars each year on research and development to continuously improve their gas turbine technologies, and aggressively price their turbines in response to RFPs. Gas turbine purchases are complex business transactions in which manufacturers often balance price on the gas turbine equipment with technical performance and contract risk in order to better position themselves to obtain more profitable parts-and-services sales—through contracts or otherwise—for those turbines. These market conditions have only heightened the importance and competitiveness of each individual gas turbine project.

Market Share and the McCoy Reports

8. GE and its competitors closely monitor their respective shares of the gas turbine market, both in terms of the total output capacity of the turbines they sell relative to the total output capacity sold in the entire market, and in terms of the number of new units they sell relative to the total number of new units sold in the entire market.

9. Competitors and other market observers have access to information about the gas turbine market through reports produced by McCoy Power Reports (the “McCoy Reports”), a private, third-party publisher that collects data from manufacturers about newly awarded gas turbine product contracts, including, among other things, the identity of the manufacturer; the identity of the customer (*i.e.*, the power provider); the date of the contract award; the project name; the location of the project; the turbine model(s)

ordered; the number of turbines ordered; and the output capacity of the turbines ordered. The McCoy Reports are widely considered to be an authoritative source for market share data about the gas turbine industry.

10. The McCoy Reports are produced in an “annual” form and an “interim” (*i.e.*, quarterly) form. The McCoy Reports are not public, and are available only on a subscription basis. Each edition of the McCoy Report summarizes trends in the global gas turbine market; describes in detail each manufacturer’s market share for the relevant time period, both in terms of total output capacity and number of units sold; discusses the trends for the gas turbine market; and reproduces the data collected about each gas turbine product contract ordered during the relevant time period.

11. The McCoy Reports are closely followed and analyzed by gas turbine manufacturers, customers, investors, and market analysts. Each of these groups pays close attention to changes in the quarterly and yearly market shares held by GE and its competitors. Declines in a manufacturer’s share of the gas turbine market are quickly picked up by the marketplace and affect the manufacturer’s reputation and standing with each of these groups.

12. Customers of gas turbine manufacturers are interested in partnering with manufacturers who have established track records and are expected to be in existence for decades to provide maintenance services for the turbines they sell. Power provider customers (or potential customers) will sometimes specifically ask manufacturers to provide McCoy Report data showing changes in the manufacturer’s share of the gas turbine market over time, and McCoy Report market share data is often discussed with customers during meetings and sales calls.

13. Investors and market analysts pay close attention to changes in gas turbine manufacturers' market shares as reflected in the McCoy Reports. Increases or declines in a manufacturer's share of the gas turbine market in a given quarter or year are noteworthy events to investors and market analysts. Market analysts, typically from financial institutions like J.P. Morgan Chase & Co., write investor reports in which they dissect McCoy Report data about changes in market share in detail and project the future performance of gas turbine manufacturers. These reports affect investor decisions about whether and how to invest in gas turbine manufacturers and investor perceptions of the strengths and weaknesses of those manufacturers.

**Effects from Recent Losses to Siemens on GE's Revenue,
Market Share, and Reputation**

14. Since mid-2019, GE has lost market share to Siemens during several different specific quarterly periods, according to both the McCoy Reports and market analyst reports.

The Peakers Project

15. In May 2019, Dominion Energy, Inc. ("Dominion") issued an RFP seeking the supply and delivery of up to eight gas turbines for a Dominion power plant in Danville, Virginia (the "Peakers Project"). Both GE and Siemens were bidders for the Peakers Project.

16. GE's bid package for the Peakers Project included pricing and technical information about four of its gas turbine models, as well as pricing and technical information for GE's maintenance services for those turbines.

17. In July 2019, Dominion awarded the Peakers Project product and service contracts to Siemens.

18. The loss of the Peakers Project contracts to Siemens affected GE's revenues. If GE had won the Peakers Project, the resulting product and services contracts would have been worth between \$225 million and \$340 million in turbine unit manufacturing and servicing revenue over the next 15 years.

19. The loss of the Peakers Project contracts to Siemens also affected GE's relative market share, as compared to Siemens' market share, during the specific quarter in which the Peakers Project contracts were reported to the market. Even though Dominion canceled the Peakers Project in August 2020, data about Dominion's award of the Peakers Project contracts to Siemens—including the number of turbines Dominion agreed to purchase from Siemens and the total output capacity of the turbines—had already been reported and incorporated into the McCoy Reports for the second quarter of 2020. That data had a direct effect on McCoy Reports' market share calculations for the second quarter of 2020, reducing GE's reported market share for that quarter and increasing Siemens' share for that quarter.

20. Prior to August 2020, data about Dominion's award of the Peakers Project contract to Siemens was also incorporated into market analyst reports about the gas turbine industry compiled and published by J.P. Morgan Chase & Co. following the second quarter of 2020. Those reports were critical of GE's order decline relative to its competitors' orders. If Siemens had not reported the Peakers Project to McCoy, the negative GE market share trend reported by J.P. Morgan Chase & Co. would have been materially lower.

21. After it won the Peakers Project contracts, Siemens' then-parent company, Siemens AG, specifically highlighted to investors and analysts the fact that Siemens had

secured those contracts in an August 2020 earnings presentation. That earnings presentation occurred shortly before Siemens AG “spun off” the energy components of its business, including its Power Generation (*i.e.*, gas turbine power) division, into a separate, publicly traded company, Siemens Energy AG, which is Siemens’ current parent company.

Other Projects

22. In addition to the Peakers Project, GE has lost at least eight other gas turbine projects to Siemens since May 2019: seven projects in which GE included one or more of the turbine models from its Peakers Project bid package, as well as one gas turbine project in which GE included a turbine model that was similar to one of its models from the Peakers Project bid package. Those projects include:

- Three large projects in Belarus where Siemens has contracted to provide 16 new gas turbines.
- Projects in Australia, Canada, Germany, Japan, and South Korea, most of which involved bid solicitations for multiple turbines.

23. The loss of these eight projects to Siemens has affected GE’s revenues. The collective lost revenue to GE represented by the product and service contracts for these eight projects is approximately \$1.036 billion.

24. The loss of these eight projects to Siemens also has affected GE’s market share and reputation. The three large Belarus projects that GE lost to Siemens have already been incorporated into the McCoy Reports and into market analyst reports.

25. The projects Siemens won over GE in Australia, Canada, Germany, Japan, and South Korea may be incorporated into upcoming McCoy Reports and market analyst reports.

26. Since May 2019, GE has also won certain contracts over Siemens' competing bid, but on less favorable terms than it would have had Siemens not been in possession of GE's confidential bidding information. In particular, in late 2019, GE won the product and service contracts for four "peaker" turbines after competing against Siemens on an RFP issued by Florida Power & Light (the "FPL Project"). Although GE expects to be profitable on those contracts overall, GE had to lower the price of the equipment portion of its proposal in order to win the contracts over Siemens' bid, and therefore GE won those contracts at a lower margin than it otherwise would have.

Upcoming Gas Turbine RFPs Where GE Will Compete Against Siemens

27. Each year, GE competes continuously against Siemens for several dozen gas turbine projects around the world.

28. Between now and June 2021, I expect GE will compete head-to-head against Siemens for up to ■ separate gas turbine RFPs for which GE intends to bid either some of the same turbine models included in its Peakers Project bid package or models that are similar to the models in the Peakers Project bid package.

29. The product and service contracts for each of the ■ upcoming gas turbine RFPs for which GE and Siemens may compete represent revenue streams for the winning manufacturer totaling tens or hundreds of millions of dollars, if not billions of dollars, per project. The winner of many of these RFPs will obtain product contracts for multiple turbines, and, in one instance, for as many as 10 turbines.

30. These ■ upcoming gas turbine RFPs will represent a meaningful share of the gas turbine market for the upcoming six months. The larger product contracts that are awarded as a result of these RFPs could individually represent multiple percentage points

of the market share for the relevant quarter, half-year, or even year in which the contracts are awarded.

31. If GE loses any of these [REDACTED] upcoming gas turbine RFPs, GE would expect the resulting market share considering those losses to be included in a future edition of the McCoy Reports, and to be further incorporated into future market analyst reports about the gas turbine industry. Such losses would affect not only GE's revenues, but its reported market share and its reputation with customers, investors, market analysts, and the public.

The Belgium RFP

32. Belgium is retiring 6 gigawatts of nuclear energy capacity by 2025. To replace this nuclear energy capacity, a capacity remuneration mechanism ("CRM") will be introduced by the Belgium Government with a new generating capacity auction by October 2021. Several RFPs for multiple planned gas turbine projects in Belgium (the "Belgium RFP") have been issued to position projects that will be ready to compete in the auction. Several power developers will procure new gas turbine units as part of the Belgium RFP. [REDACTED]

[REDACTED]

[REDACTED]

33. The Belgium RFP is structured as a multi-stage "auction" RFP, in which: (1) manufacturers will submit preliminary, non-binding bid packages; (2) the participating power developers will review the preliminary bid information submitted, and, based on that review, select and announce their "technology selection," *i.e.*, the types of gas turbine technologies they wish to procure for their Belgium operations; (3)

manufacturers will submit final, binding bid packages in response to the participating customer's "technology selections"; and (4) the participating customers will review the final bids submitted and select the winning manufacturer(s). [REDACTED]

34. [REDACTED]

[REDACTED] The final revenue amounts will depend on the size, scope, and technology of the winning project(s). The winning manufacturers for the Belgium projects likely will work on those projects for a three-year period, in addition to the much longer time period that would cover the accompanying service agreement(s).

35. [REDACTED]

36. [REDACTED]

The Italy RFP

37. Several RFPs for multiple planned gas turbine projects in Italy (the "Italy RFP") have been issued to position projects that will be ready to compete in the auction.

[REDACTED]

[REDACTED]

38. The Italy RFP is structured as a multi-stage “auction” RFP, in which: (1) manufacturers will submit preliminary, non-binding bid packages; (2) the participating power developer will review the preliminary bid information submitted, and, based on that review, select and announce their “technology selection,” *i.e.*, the types of gas turbine technologies they wish to procure for their Italy operations; (3) manufacturers will submit final, binding bid packages in response to the participating customer’s “technology selections”; and (4) the participating customers will review the final bids submitted and select the winning manufacturer(s). [REDACTED]

[REDACTED]

39. [REDACTED]

[REDACTED] The final revenue amounts will depend on the size, scope, and technology of the winning project(s). The winning manufacturers for the Italy projects will work on those projects over a three-year period, in addition to the much longer time period that would cover the accompanying service agreement(s).

40. [REDACTED]

[REDACTED]

[REDACTED] GE’s preliminary bids are due sometime before March 2021. Participating power developers are expected to make their “technology selections” by June.

41. [REDACTED]
[REDACTED]
[REDACTED]

I declare under penalty of perjury that the foregoing is true and correct. Executed
on February 1st, 2021, at Pittsburgh, PA.


Katy Wilner